



State of Wisconsin
2005 - 2006 LEGISLATURE

LRB-1617/4

MGD:wlj:rs

D-Note



2005 BILL

Remove all
4-5th notes
please

SOON

Regen

1 AN ACT *to renumber and amend* 941.23; and *to create* 20.455 (2) (gu), 175.50,
2 941.23 (1), 941.23 (2) (a), 941.23 (2) (b), 941.23 (2) (c), 941.23 (3), 941.237 (3) (k),
3 941.237 (3) (L), 941.29 (10) (c) and 941.29 (10) (d) of the statutes; **relating to:**
4 carrying of concealed weapons by out-of-state and retired law enforcement
5 officers, granting rule-making authority, and making an appropriation.

Insert

Analysis by the Legislative Reference Bureau

This is a preliminary draft. An analysis will be provided in a later version.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

6 SECTION 1. 20.455 (2) (gu) of the statutes is created to read:
7 20.455 (2) (gu) Training, ^{and} identification cards, and certifications relating to
8 carrying of concealed weapons. All moneys received as fees under s. 175.50 to provide
9 training, ^{and} identification cards, and certifications to retired law enforcement officers
10 seeking to carry concealed weapons and to confirm their eligibility to do so.

INS
1/10

revised

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SECTION 2. 175.50 of the statutes is created to read:

175.50 Retired law enforcement officers seeking to carry concealed weapons. (1) DEFINITIONS. In this section:

(a) "Department" means the department of justice.

(b) "Law enforcement officer" means a person who is employed by a public agency for the purpose of engaging in, or supervising others engaging in, the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law and who has statutory powers of arrest.

** move to 8/6*
(c) "Retired federal or out-of-state law enforcement officer" means a person who, before retiring, was employed as a law enforcement officer with a public agency other than a Wisconsin law enforcement agency.

(d) "Tribal law enforcement agency" means an agency of a tribe if the agency is established for the purpose of preventing and detecting crime on the reservation or trust lands of the tribe and enforcing the tribe's laws or ordinances and employs full time one or more persons who are granted law enforcement and arrest powers under s. 165.92 (2) (a).

has the meaning given
(e) "Wisconsin law enforcement agency" means a Wisconsin law enforcement agency, as defined in s. 175.46 (1) (f), or a tribal law enforcement agency.

~~DUTIES OF DEPARTMENT AND OTHER WISCONSIN LAW ENFORCEMENT AGENCIES~~ *DUTIES*

31
Subject to sub. (4), after a law enforcement officer retires from service with a Wisconsin law enforcement agency, the agency shall do all of the following:

(a) Provide the ^{retired} officer, upon request and at his or her own expense, opportunities to ~~attend training~~ *meet* that its active duty officers are required to complete, either under s. 165.85 (4) (b) or under policies adopted by the agency, as a condition of their carrying firearms.

meet the standards established by the agency for training and qualification

BILL

retired

1 (b) Issue and provide the officer, upon request and at his or her own expense,
2 an identification card that includes the officer's ^{his or her} photograph and that meets the
3 requirements of sub. (b) if the officer is a resident of this state, he or she meets the
4 standards established by the agency, if any, for qualification for active law
5 enforcement officers to carry a firearm, and one of the following applies:

6 1. Within the preceding 12 months, the ^{retired} officer ^{met} satisfactorily completed the
7 training provided under par. (a). ^{standards described in}

8 2. Within the preceding 12 months, the officer satisfactorily completed any
9 training that the agency's active duty officers were required to complete, either
10 under s. 165.85 (4) (bn) or under policies adopted by the agency, as a condition of their
11 carrying firearms. ^{either before or after retiring}

12 3. The agency's ² active duty officers are not required to complete any training,
13 either under s. 165.85 (4) (bn) or under policies adopted by the agency, as a condition
14 of their carrying firearms. ^{does not have any standards of the type described in par. (a)}

15 (c) Issue and provide the officer, upon request and at his or her own expense,
16 a photographic identification card that indicates that the officer ^{he or she} retired from service
17 from the agency as a law enforcement officer. This paragraph applies only if the ^{retired}
18 officer is not a resident of Wisconsin when requesting the issuance of the card.

19 (3) DUTIES OF DEPARTMENT. Subject to sub. (4), the department shall do all of
20 the following:

21 (a) Provide a retired federal or out-of-state law enforcement officer, upon
22 request and at his or her own expense, opportunities to attend training that the
23 department is required to provide, if any, to its active duty officers under s. 165.85
24 (4) (bn) as a condition of their carrying firearms.

BILL

from a agency

- 4 -

with respect to a person
requesting an opportunity
to meet an agency's firearms
standards under subg (2) (a) or
requesting an identification card under
subg (2) (b) or (c)

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SECTION 2

(b) Issue and provide the officer, upon request and at his or her own expense, a written certification that meets the requirements of sub. (5) if one of the following applies:

1. Within the preceding 12 months, the officer satisfactorily completed the training provided under par. (a).

2. The department is not required to provide training under s. 165.85 (4) (bn) to its active duty officers as a condition of their carrying firearms.

(4) PREREQUISITES FOR AGENCY OR DEPARTMENT ACTION.

STET

(a)

Law enforcement

Subsections (2) and (3) do not apply unless the law enforcement agency or the department, as applicable, confirms all of the following:

1. That the officer retired in good standing from service as a law enforcement officer with a public agency for reasons other than mental instability.

2. That at least one of the following apply:

Before retiring, the officer was regularly employed as a law enforcement officer for an aggregate of 15 years or more.

b. The officer completed any applicable probationary period of service with a public agency and retired from service with the agency due to a service-connected disability, as determined by the agency.

3. That the officer has a nonforfeitable right to benefits under a law enforcement agency's retirement plan.

(b) Firearms restrictions record searches. Subsections (2) and (3) apply only if the department determines that its records do not indicate that the retired law enforcement officer is prohibited from possessing a firearm under s. 941.29 (1) (a),

(b), (bm), (c), (d), (e), or (g) of federal law. The department shall promulgate rules specifying how other Wisconsin law enforcement agencies may request that the

or is a person specified in

BILL

department make such a determination with respect to a person formerly employed as a law enforcement officer by that agency. Rules promulgated under this paragraph may require ~~the agency~~ ^{a person who is the subject of a determination under this subdivision} to pay a fee to the department, ~~which the agency~~ ^{to cover the department's costs under this subdivision} may collect from the retired law enforcement officer.

~~(c) Residency requirement.~~ Subsection (3) does not apply unless the ~~retired~~ ^{retired person} federal or out-of-state law enforcement officer is a resident of this state.

~~(d) Consents.~~ A ^{Wisconsin} law enforcement agency or the department may require a ~~retired law enforcement officer~~ ^{person} to sign appropriate consents for release of information to enable the agency or the department to confirm that he or she meets all of the prerequisites under this subsection for the agency or the department to act under sub. (2) ~~or (3)~~ ^{In addition to ~~any~~ other fees authorized under sub. (2) (a) and (b).}

~~(e) Fees.~~ A ^{Wisconsin} law enforcement agency or the department may require a ~~retired~~ ^{retired person} law enforcement officer to pay a fee, not to exceed the agency's or the department's costs, for verifying his or her employment history or retirement plan status ~~or for~~ determining whether he or she is eligible to possess a firearm under s. 941.29, if applicable, and federal law. ^{under par. (a)}

(5) REQUIREMENTS FOR IDENTIFICATION CARDS AND CERTIFICATIONS. ^{retired} **(a)** An identification card issued to an officer under sub. (2) shall indicate all of the following:

^{retired} **(a)** That the agency has found that the officer has met the issuing agency's and the state's standards for training and qualification for its active law enforcement officers to carry a firearm. ^{described in sub. (2) (a), if any}

^{par. (a)} **(b)** The date on which the agency made the finding under subd. 1.

^{par. (a)} **(c)** The type of firearm that, as a result of the finding under subd. 1, the ^{retired} officer may be qualified to carry concealed.

BILL

SECTION 2

(b) A certificate issued to an officer under sub. (3) shall indicate all of the following:

1. That the department has found that the officer has met the state's standards for training and qualification for its active duty law enforcement officers to carry a firearm.

2. The date on which the department made the finding under subd. 1.

3. The type of firearm that, as a result of the finding under subd. 1., the officer may be qualified to carry concealed.

(B) (6) FEES. Payments made to the department under sub. (2) (3) or (4) (e) or under rules promulgated under sub. (4) (b) shall be credited to the appropriation under s. 20.455 (2) (gu).

(B) (7) SCHEDULING OF TRAINING. A Wisconsin law enforcement agency is not required to offer training under sub. (2) or (3) other than through regularly scheduled sessions for its active duty law enforcement officers.

SECTION 3. 941.23 of the statutes is renumbered 941.23 (2) (intro.) and amended to read:

941.23 (2) (intro.) Any person ~~except a peace officer~~ other than one of the following who goes armed with a concealed and dangerous weapon is guilty of a Class A misdemeanor.

SECTION 4. 941.23 (1) of the statutes is created to read:

941.23 (1) In this section:

(a) "Destructive device" means any of the following but does not include an exempt device:

BILL

1 1. A bomb, a grenade, a rocket having a propellant charge of more than 4
2 ounces, a missile having an explosive or incendiary charge of more than 0.25 ounce,
3 a mine, or any similar device.

4 2. Any type of weapon, other than a shotgun or a shotgun shell that the U.S.
5 department of justice finds is generally recognized as particularly suitable for
6 sporting purposes, that expels, or that may be readily converted to expel, a projectile
7 by the action of an explosive or other propellant and that has a barrel with a bore of
8 more than 0.5 inch in diameter.

9 3. Any combination of parts that is designed for converting, or intended for use
10 in converting, any device into a device described in subd. 1. or 2. and from which a
11 device described in subd. 1. or 2. may be readily assembled.

12 (b) "Exempt device" means any of the following:

13 1. A device that is neither designed nor redesigned for use as a weapon.

14 2. A device that, although originally designed for use as a weapon, is redesigned
15 for use as a signaling, pyrotechnic, line throwing, safety, or similar device.

16 3. Surplus ordnance sold, loaned, or given by the U.S. secretary of the army
17 under 10 USC 4684 (2), 4685, or 4686.

18 4. Any other device that the U.S. department of justice finds is not likely to be
19 used as a weapon, is an antique, or is a rifle that the owner intends to use solely for
20 sporting, recreational, or cultural purposes.

21 (c) "Law enforcement officer" has the meaning given in s. 175.50 (1) (b). ✓

22 (d) "Qualified out-of-state law enforcement officer" means a law enforcement
23 officer to whom all of the following apply:

24 1. The person is employed by a state or local government agency in another
25 state.

BILL

1 2. The agency has authorized the person to carry a firearm.

2 3. The person is not the subject of any disciplinary action by the agency.

3 4. The person meets all standards established by the agency to qualify the
4 person on a regular basis to use a firearm.

5 5. The person is not prohibited under federal law from possessing a firearm.

6 ~~(e) "Retired federal or out-of-state law enforcement officer" has the meaning~~
7 ~~given in s. 175.50 (1) (c).~~

8 (f) "Retired Wisconsin law enforcement officer" means a person who, before
9 retiring, was employed as a law enforcement officer with a Wisconsin law
10 enforcement agency, as defined in s. 175.50 (1) ^c(~~e~~).

11 SECTION 5. 941.23 (2) (a) of the statutes is created to read:

12 941.23 (2) (a) A peace officer.

13 SECTION 6. 941.23 (2) (b) of the statutes is created to read:

14 941.23 (2) (b) A qualified out-of-state law enforcement officer. This paragraph
15 applies only if all of the following apply: ^{INS 8/16✓}

16 1. The weapon is a firearm but is not a machine gun, as defined in s. 941.27 (1),
17 or a destructive device.

18 2. A firearm silencer, as defined in s. 941.298 (1), is not attached to the weapon.

19 3. The officer is not under the influence of an intoxicant.

****NOTE: 1) Under the bill, an out-of-state law enforcement officer or a qualified retiree who carries a concealed weapon other than a firearm or who carries a concealed firearm while under the influence of an intoxicant is guilty of a Class A misdemeanor. (The penalties would be the same as those that apply under current law for unlawfully carrying a concealed weapon.) Is that okay? 2) I did not include any reference to federal law enforcement officers here, because they are already covered by the reference to "peace officer" in current law.

20 SECTION 7. 941.23 (2) (c) of the statutes is created to read:

21 941.23 (2) (c) 1. A retired Wisconsin law enforcement officer.

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INS ✓
9/3

within the
preceding 12
months

1 2. A retired federal or out-of-state law enforcement officer.

2 3. This paragraph applies only if all of the following apply:

3 a. The weapon is a firearm of the type described in a valid identification card
4 described in sub. (3) (b) 1. or 2. ^(intro.) a. or (c) 1. ^(intro.) a. or 2. ^(intro.) a. that was issued to the ^{retired} officer or
5 a valid certification described in sub. (3) (b) 2. b. or (c) ~~1. b.~~ 2. b. that was issued
6 to the officer.

7 b. Within the preceding 12 months, the officer met the standards of the state
8 in which he or she resides for training and qualification for active ^{duty} law enforcement
9 officers to carry firearms.

10 c. The weapon is not a machine gun, as defined in s. 941.27 (1), or a destructive
11 device.

12 d. A firearm silencer, as defined in s. 941.298 (1), is not attached to the weapon.

13 ^{retired} e. The officer is not under the influence of an intoxicant.

14 f. The officer is not prohibited under federal law from possessing a firearm.

15 SECTION 8. 941.23 (3) of the statutes is created to read:

16 941.23 (3) (a) ^{A person to whom} An officer described under sub. (2) (b) ^{applies} who is carrying a concealed
17 firearm shall, while ^{doing so}, also carry an identification card that contains his or her
18 photograph and that was issued by the law enforcement agency by which he or she
19 is employed.

20 ^(b) (b) ^{A resident of this state to whom} An officer described under sub. (2) (c) 1. ^{applies} who is carrying a concealed firearm
21 shall, while ^{doing so}, also carry ^{one of the following} ^{(use twice) ↑}

22 1. If the officer is a resident of this state, an identification card issued under
23 s. 175.50 (2) (b).

24 2. If the officer is not a resident of this state, ^{A person who} one of the following

and to whom sub. (2) (c) 1. applies shall, while he or she also
carry ^(No 91)

BILL

~~1~~ ~~a.~~ ^{either} An identification card issued under s. 175.50 (2) (b) if the ~~officer~~ ^{person} was a resident of this state when the card was issued, ^{or both of the following:}

~~2~~ ~~b.~~ A certification that is substantially similar to one issued under s. 175.50 (3) (b) and that was issued by the state in which the officer resides and an identification card that contains the officer's photograph and that was issued by the law enforcement agency that employed the officer immediately before his or her retirement.

~~3~~ ~~(c)~~ ^{resident of this state to whom} An officer described under sub. (2) (c) 2. ^{applies} who is carrying a concealed firearm shall, while doing so, also carry one of the following:

~~4~~ ~~1.~~ If the officer is a resident of this state, one of the following:

~~5~~ ~~a.~~ An identification card that was issued by the law enforcement agency that employed the ^{person as a law enforcement} officer immediately before his or her retirement and that is substantially similar to one issued under s. 175.50 (2) (b).

~~6~~ ~~b.~~ A certification issued under s. 175.50 (3) (b) and an identification card that contains the officer's photograph and that was issued by the law enforcement agency that employed the officer immediately before his or her retirement.

~~7~~ 2. If the officer is not a resident of this state, one of the following:

~~8~~ ~~a.~~ ^{person as a law enforcement} An identification card that was issued by the law enforcement agency that employed the officer immediately before his or her retirement and that is substantially similar to one issued under s. 175.50 (2) (b).

~~9~~ ~~b.~~ A certification that is substantially similar to one issued under s. 175.50 (3) (b) and that was issued by the state in which the officer resides and an identification card that contains the officer's photograph and that was issued by the law enforcement agency that employed the officer immediately before his or her retirement.

Use x3

within the preceding 12 months

BILL

- 11 - In interstate or foreign commerce and to whom

that has been shipped or transported

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SECTION 9

1 SECTION 9. 941.237 (3) (k) of the statutes is created to read:

2 941.237 (3) (k) A qualified out-of-state law enforcement officer, as defined in

3 s. 941.23 (1) (d), who is carrying a concealed firearm, but only if s. 941.23 (2) (b) 1. STEI

4 to 3. applies.

5 SECTION 10. 941.237 (3) (L) of the statutes is created to read:

6 941.237 (3) (L) A retired Wisconsin law enforcement officer, as defined in s.

7 941.23 (1) (f), or a retired federal or out-of-state law enforcement officer, as defined

8 in s. 941.23 (1) (f), who is carrying a concealed firearm, but only if s. 941.23 (2) (c) 3.

9 a. to f. applies. STEI

10 SECTION 11. 941.29 (10) (c) of the statutes is created to read:

11 941.29 (10) (c) The person is a retired Wisconsin law enforcement officer, as

12 defined in s. 941.23 (1) (f), or a retired federal or out-of-state law enforcement officer,

13 as defined in s. 941.23 (1) (f), who is carrying a concealed firearm, but only if s. 941.23

14 (2) (c) 3. a. to f. applies. STEI

15 SECTION 12. 941.29 (10) (d) of the statutes is created to read:

16 941.29 (10) (d) The person is a qualified out-of-state law enforcement officer,

17 as defined in s. 941.23 (1) (d), who is carrying a concealed firearm, but only if s. 941.23

18 (2) (b) 1. to 3. applies. STEI

19

(END)

INS 11/19

INS 11/16

Ad "retired" where needed

Approved

that has been shipped
or transported in
interstate commerce
and to whom

analysis INSERT

This bill makes certain changes in Wisconsin law to account for a federal law that provides, under certain circumstances, the right to carry concealed firearms to an individual who works as or who has retired from working as a law enforcement officer in Wisconsin or in any other state.

Current state and federal law regarding concealed weapons

Wisconsin law specifies that, in general, no person may go armed with a concealed firearm or any other concealed, dangerous weapon. This prohibition, however, does not apply to peace officers, such as local, state, tribal, or federal law enforcement officers. In addition, under *State v. Hamdan*, 2003 WI 113, 264 Wis. 2d 433, it is unconstitutional to apply this prohibition to a person carrying a concealed weapon at his or her own business when: 1) the person's interest in carrying a concealed weapon substantially outweighs the state's interest in enforcing the concealed weapons law; 2) the person has no other reasonable means to keep and handle the weapon; and 3) the person is not motivated by an unlawful purpose in concealing it. The *Hamdan* court also indicated that the constitutional right to keep and bear arms for security must permit a person to carry a concealed weapon under certain circumstances in his or her own home.

In addition, federal law prohibits the state from barring certain active duty or retired law enforcement officers from carrying concealed firearms. Under federal law, qualified law enforcement officers and qualified retired law enforcement officers who meet certain specified requirements may carry concealed firearms that have been shipped or transported in interstate or foreign commerce, regardless of any prohibition imposed under state law.

Federal law specifies the criteria that a person must meet to be a qualified law enforcement officer or a qualified retired law enforcement officer. To be the former, a person must: 1) be employed by a governmental agency; 2) be a law enforcement officer (under federal law, a person authorized by law to engage in or supervise the prevention, detection, investigation, or prosecution of, or the incarceration of any person for, any violation of law and having statutory powers of arrest); 3) be authorized by the agency to carry a firearm; 4) not be the subject of any disciplinary action by the agency; 5) meet all standards, if any, established by the agency to qualify the person on a regular basis to use a firearm; 6) not be under the influence of alcohol or other drugs; and 7) not be prohibited under federal law from possessing a firearm. For a person to be a qualified retired law enforcement officer, all of the following must apply: 1) the person retired in good standing from service with a government agency as a law enforcement officer, other than for reasons of mental instability; 2) before retirement, the person was regularly employed as a law enforcement officer for an aggregate of 15 years or more or retired after completing any applicable probationary period of service due to a service-connected disability; 3) the person has a nonforfeitable right to benefits under the agency's retirement plan; 4) during the most recent 12-month period, the person has met the state's standards for training and qualification for active duty law enforcement officers to

carry firearms; 5) the person is not under the influence of alcohol or other drugs; and 6) the person is not prohibited under federal law from possessing a firearm.

Under federal law, if a person is a qualified law enforcement officer, the prohibition contained in Wisconsin law regarding going armed with a concealed and dangerous weapon does not apply to his or her going armed with a concealed firearm if the person carries the photo ID issued by the agency for which he or she works. If the person is a qualified retired law enforcement officer, the prohibition does not apply to his or her going armed with a concealed firearm if the person carries either: 1) a photo ID issued by the agency from which the person retired as a law enforcement officer that indicates that, within the preceding 12 months, the agency has tested the person or otherwise found that he or she meets its standards for training and qualification for active duty law enforcement officers to carry the type of firearm that the qualified retired law enforcement officer is carrying concealed; or 2) both of the following: a) a photo ID issued by the agency from which the person retired as a law enforcement officer; and b) a certification issued by the state in which the person resides that indicates that, within the preceding 12 months, the state has tested the person or otherwise found that he or she meets its standards for training and qualification for active duty law enforcement officers to carry the type of firearm that the qualified retired law enforcement officer is carrying concealed. Federal law, however, specifies that the exemption for qualified law enforcement officers and qualified retired law enforcement officers does not apply if the firearm involved is a machine gun, has a silencer attached to it, or is a destructive device (such as a bomb). Federal law also specifies that a state may: 1) permit private persons or entities to bar the possession of concealed firearms on their own property; and 2) prohibit or restrict the possession of firearms on any state or local government property, installation, base, building, or park.

What the bill does

This bill codifies in the state concealed weapons statute the provisions of federal law that make the statute inapplicable to active duty and retired law enforcement officers under the circumstances specified in federal law (and described above). To implement federal law, the bill also makes certain other state law prohibitions regarding the carrying of firearms inapplicable to an active duty or retired law enforcement officer if he or she is carrying a concealed firearm under those same circumstances. These include the prohibition on going armed with a handgun in a tavern, the prohibition regarding the possession, transportation, or loading of a handgun in certain vehicles, and the prohibition on possessing a firearm that may arise in certain domestic abuse cases. (Depending on the facts, however, a person who is subject to such an injunction may, as a result of that case, also be prohibited under federal law from possessing a firearm, which means that the federal law regarding the carrying of a concealed firearm would not apply.) Similarly, the bill modifies the state's prohibition on possessing a firearm in a school zone to create an exemption for active duty and retired law enforcement officers. The bill, however, leaves unaffected the provisions of the gun-free school zone law that relate to possession of a firearm in a public school itself or on the grounds of a public school.

The bill also requires state and local law enforcement agencies in Wisconsin to issue to their retired law enforcement officers photo ID cards of the type that will permit the retired officers to carry concealed firearms in the manner provided under federal law. Under the bill, after a law enforcement officer retires from service with a state or local law enforcement agency, the agency must provide the retired officer, upon his or her request, opportunities to meet the agency's standards for training and qualification that active duty officers must meet to carry firearms. The agency must also provide the retired officer a photo ID card upon his or her request if, within the preceding 12 months, the officer met those standards or if the agency does not have any such standards. The photo ID card must indicate all of the following: 1) that the agency has found that the officer has met the issuing agency's standards for training and qualification for its active duty law enforcement officers to carry firearms; 2) the date on which the agency made that finding; and 3) the type of firearm that, as a result of the finding, the officer may be qualified to carry concealed. These requirements, however, apply only if: 1) the retired officer satisfies the first four criteria listed above for being a "qualified retired law enforcement officer" under federal law; 2) the Department of Justice (DOJ) determines that its records do not indicate that the retired officer is prohibited from possessing a firearm under federal law ~~or~~ (with the exception of the prohibition based on a domestic abuse injunction) ~~state law~~; and 3) the retired officer is a Wisconsin resident. If a retired officer lives in another state, he or she may have the agency issue a less detailed photo ID card which, in combination with a certification issued by the other state, would permit the person to carry a concealed firearm. The agency may charge the retired officer a fee to cover the costs of issuing either type of ID card. The agency may also charge a Wisconsin resident a fee to cover the costs of providing training and determining the person's eligibility. In addition, DOJ may charge a Wisconsin resident for conducting a background check.

Finally, the bill requires an active duty or retired law enforcement officer to carry his or her ID card, or ID card and certification, while carrying a concealed firearm. A person who violates this prohibition is subject to a forfeiture (a civil penalty) of not more than \$200. In contrast to the requirements of federal law, ~~however,~~ the exemption that the bill creates in the state's concealed weapons statute for an active duty or retired law enforcement officer is not dependent on the person carrying his or her ID card, or ID card and certification. The person only needs to have been issued the ID card, or ID card and certification, for the exemption to apply.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

INSERT 1/10

SECTION 1. 23.33 (3) (e) of the statutes is renumbered 23.33 (3) (e) (intro.) and

amended to read:

23.33 (3) (e) (intro.) With any firearm in his or her possession unless it is unloaded and enclosed in a carrying case, ~~or any bow unless it is unstrung or enclosed in a carrying case.~~ This paragraph does not apply to any of the following:

~~SECTION 2.~~ 23.33 (3) (e) 1. of the statutes is created to read:

23.33 (3) (e) 1. A person who is employed in this state by a public agency as a law enforcement officer, who is carrying a concealed firearm that has been shipped or transported in interstate or foreign commerce, and to whom s. 941.23 (1) (d) 2. to 5. and (2) (b) 1. to 3. applies.

~~SECTION 3.~~ 23.33 (3) (e) 2. of the statutes is created to read:

23.33 (3) (e) 2. A qualified out-of-state law enforcement officer, as defined in s. 941.23 (1) (d), who is carrying a concealed firearm that has been shipped or transported in interstate or foreign commerce and to whom s. 941.23 (2) (b) 1. to 3. applies.

~~SECTION 4.~~ 23.33 (3) (e) 3. of the statutes is created to read:

23.33 (3) (e) 3. A retired Wisconsin law enforcement officer, as defined in s. 941.23 (1) (f), or a retired federal or out-of-state law enforcement officer, as defined in s. 941.23 (1) (e), who is carrying a concealed firearm that has been shipped or transported in interstate or foreign commerce and to whom s. 941.23 (2) (c) 3. a. to f. applies.

~~SECTION 5.~~ 23.33 (3) (em) of the statutes is created to read:

23.33 (3) (em) With any bow unless it is unstrung or enclosed in a carrying case.

~~SECTION 6.~~ 29.091 of the statutes is renumbered 29.091 (1) and amended to read:

29.091 (1) No person may hunt or trap within any wildlife refuge established under s. 23.09 (2) (b) or 29.621 (1), or, except as provided in sub. (2). have possession

1 or control of any gun, firearm, bow or crossbow unless the gun or firearm is unloaded,
2 the bow or crossbow is unstrung and the gun, firearm, bow or crossbow is enclosed
3 within a carrying case. The taking of predatory game birds and animals shall be done
4 as the department directs. All state wildlife refuge boundary lines shall be marked
5 by posts placed at intervals of not over 500 feet and bearing signs with the words
6 "Wisconsin Wildlife Refuge".

7 **SECTION 29.091** (2) of the statutes is created to read:

8 29.091 (2) The prohibition in sub. (1), as it relates to the possession or control
9 of a loaded or unencased firearm within a ^{game}wildlife refuge established under s. 23.09
10 (2) (b), does not apply to any of the following:

11 (a) A person who is employed in this state by a public agency as a law
12 enforcement officer, who is carrying a concealed firearm that has been shipped or
13 transported in interstate or foreign commerce, and to whom s. 941.23 (1) (d) 2. to 5.
14 and (2) (b) 1. to 3. applies.

15 (b) A qualified out-of-state law enforcement officer, as defined in s. 941.23 (1)
16 (d), who is carrying a concealed firearm that has been shipped or transported in
17 interstate or foreign commerce and to whom s. 941.23 (2) (b) 1. to 3. applies.

18 (c) A retired Wisconsin law enforcement officer, as defined in s. 941.23 (1) (f),
19 or a retired federal or out-of-state law enforcement officer, as defined in s. 941.23
20 (1) (e), who is carrying a concealed firearm that has been shipped or transported in
21 interstate or foreign commerce and to whom s. 941.23 (2) (c) 3. a. to f. applies.

22 **SECTION 29.621** (4) of the statutes is renumbered 29.621 (4) (intro.) and
23 amended to read:

24 29.621 (4) Except as provided in s. 29.091 (1), no owner of a wildlife refuge, and
25 no other person, may hunt or trap within the boundaries of any wildlife refuge or

1 have in his or her possession or under his or her control in the wildlife refuge a gun,
2 firearm, bow or crossbow, unless the gun or firearm is unloaded, the bow or crossbow
3 is unstrung and the gun, firearm, bow or crossbow is enclosed within a carrying case.
4 ~~Nothing in this section may prohibit, prevent or interfere with the department in the~~
5 ~~destruction of injurious animals.~~ This subsection, as it relates to the possession or
6 control of a loaded or unencased firearm, does not apply to any of the following:

7 ~~SECTION 9.~~ 29.621 (4) (a) of the statutes is created to read:

8 29.621 (4) (a) A person who is employed in this state by a public agency as a
9 law enforcement officer, who is carrying a concealed firearm that has been shipped
10 or transported in interstate or foreign commerce, and to whom s. 941.23 (1) (d) 2. to
11 5. and (2) (b) 1. to 3. applies. STET ✓

12 ~~SECTION 10.~~ 29.621 (4) (b) of the statutes is created to read:

13 29.621 (4) (b) A qualified out-of-state law enforcement officer, as defined in s.
14 941.23 (1) (d), who is carrying a concealed firearm that has been shipped or
15 transported in interstate or foreign commerce and to whom s. 941.23 (2) (b) 1. to 3.
16 applies. STET ✓

17 ~~SECTION 11.~~ 29.621 (4) (c) of the statutes is created to read:

18 29.621 (4) (c) A retired Wisconsin law enforcement officer, as defined in s.
19 941.23 (1) (f), or a retired federal or out-of-state law enforcement officer, as defined
20 in s. 941.23 (1) (e), who is carrying a concealed firearm that has been shipped or
21 transported in interstate or foreign commerce and to whom s. 941.23 (2) (c) 3. a. to
22 f. applies. STET ✓

23 ~~SECTION 12.~~ 29.621 (6) of the statutes is created to read:

24 29.621 (6) INJURIOUS ANIMALS. Nothing in this section may prohibit, prevent or
25 interfere with the department in the destruction of injurious animals. 3

1 ~~SECTION 13.~~ 165.82 (1) (intro.) of the statutes is amended to read:

2 165.82 (1) (intro.) Notwithstanding s. 19.35 (3), the department of justice shall
3 impose the following fees, plus any surcharge required under sub. (1m), for criminal
4 history searches for purposes unrelated to criminal justice or to s. 175.35 or 175.50:

5 ~~SECTION 14.~~ 165.82 (2) of the statutes is amended to read:

6 165.82 (2) ~~Except as provided in s. 175.35, the~~ The department of justice shall
7 not impose fees for criminal history searches for purposes related to criminal justice.

8 ~~SECTION 15.~~ 167.31 (4) (ar) of the statutes is created to read:

9 167.31 (4) (ar) Subsections (2) (a), (b), and (c) and (3) (a) and (b) do not apply
10 to the placement, possession, or transportation of a firearm by any of the following:

11 1. A person who is employed in this state by a public agency as a law
12 enforcement officer, who is carrying a concealed firearm that has been shipped or
13 transported in interstate or foreign commerce, and to whom s. 941.23 (1) (d) 2. to 5.

14 and (2) (b) 1. to 3. applies.

15 2. A qualified out-of-state law enforcement officer, as defined in s. 941.23 (1)
16 (d), who is carrying a concealed firearm that has been shipped or transported in
17 interstate or foreign commerce and to whom s. 941.23 (2) (b) 1. to 3. applies.

18 3. A retired Wisconsin law enforcement officer, as defined in s. 941.23 (1) (f),
19 or a retired federal or out-of-state law enforcement officer, as defined in s. 941.23
20 (1) (e), who is carrying a concealed firearm that has been shipped or transported in
21 interstate or foreign commerce and to whom s. 941.23 (2) (c) 3. a. to f. applies.

22 INSERT 6/14

23 ~~SECTION 16.~~ 440.26 (3m) of the statutes is renumbered 440.26 (3m) (intro.) and
24 amended to read:

(intro.)

1 440.26 (3m) RULES CONCERNING DANGEROUS WEAPONS. The department shall
2 promulgate rules relating to the carrying of dangerous weapons by a person who
3 holds a license or permit issued under this section or who is employed by a person
4 licensed under this section. The rules shall meet the minimum requirements
5 specified in 15 USC 5902 (b), and shall allow all of the following:

History: 1971 c. 213 s. 5; 1977 c. 29, 125, 418; 1979 c. 102 ss. 45, 236 (3); 1981 c. 334 s. 25 (1); 1981 c. 380, 391; 1983 a. 189 s. 329 (31); 1983 a. 273; 1985 a. 128, 135; 1991 a. 39, 269; 1993 a. 112, 213; 1995 a. 461; 1997 a. 27; 1999 a. 32.

6 SECTION 17. 440.26 (3m) (a) of the statutes is created to read:

7 440.26 (3m) (a) A person who is employed in this state by a public agency as
8 a law enforcement officer, to carry a concealed firearm that has been shipped or
9 transported in interstate or foreign commerce if s. 941.23 (1) (d) 2. to 5. and (2) (b)
10 1. to 3. applies.

11 SECTION 18. 440.26 (3m) (b) of the statutes is created to read:

12 440.26 (3m) (b) A retired Wisconsin law enforcement officer, as defined in s.
13 941.23 (1) (f), and a retired federal or out-of-state law enforcement officer, as defined
14 in s. 941.23 (1) (e), to carry a concealed firearm that has been shipped or transported
15 in interstate or foreign commerce if s. 941.23 (2) (c) 3. a. to f. applies.

16 SECTION 19. 885.235 (1g) (intro.) of the statutes is amended to read:

17 885.235 (1g) (intro.) In any action or proceeding in which it is material to prove
18 that a person was under the influence of an intoxicant or had a prohibited alcohol
19 concentration or a specified alcohol concentration while operating or driving a motor
20 vehicle or, if the vehicle is a commercial motor vehicle, on duty time, while operating
21 a motorboat, except a sailboat operating under sail alone, while operating a
22 snowmobile, while operating an all-terrain vehicle, while going armed with a
23 concealed weapon, or while handling a firearm, evidence of the amount of alcohol in
24 the person's blood at the time in question, as shown by chemical analysis of a sample

1 of the person's blood or urine or evidence of the amount of alcohol in the person's
2 breath, is admissible on the issue of whether he or she was under the influence of an
3 intoxicant or had a prohibited alcohol concentration or a specified alcohol
4 concentration if the sample was taken within 3 hours after the event to be proved.
5 The chemical analysis shall be given effect as follows without requiring any expert
6 testimony as to its effect:

7 **INSERT 8/16**

8 ☒ that has been shipped or transported in interstate or foreign commerce

9 **INSERT 9/3**

10 ☒ that has been shipped or transported in interstate or foreign commerce and is

11 **INSERT 10/3**

12 a. An identification card that was issued by the law enforcement agency that
13 employed the person as a law enforcement officer immediately before his or her
14 retirement and that contains his or her photograph.

15 b. A certification issued by the state in which the person resides that indicates
16 that, within the preceding 12 months, the person was tested or otherwise found by
17 the state to meet the standards established by the state for training and qualification
18 for active duty law enforcement officers to carry a firearm of the same type as the
19 concealed firearm.

20 **INSERT 10/18**

21 2. A person who is not a resident of this state and to whom sub. (2) (c) 2. applies
22 shall, while carrying a concealed firearm, also carry either

23 **INSERT 10/20**

24 ☒ or both of the following:

1 a. An identification card that was issued by the law enforcement agency that
2 employed the person as a law enforcement officer immediately before his or her
3 retirement and that contains his or her photograph.

4 b. A certification issued by the state in which the person resides that indicates
5 that, within the preceding 12 months, the person was tested or otherwise found by
6 the state to meet the standards established by the state for training and qualification
7 for active duty law enforcement officers to carry a firearm of the same type as the
8 concealed firearm.

9 **INSERT 11/16**

10 No ff This section does not apply to any of the following:

11 (a) A person who is employed in this state by a public agency as a law
12 enforcement officer, who is carrying a concealed firearm that has been shipped or
13 transported in interstate or foreign commerce, and to whom s. 941.23 (1) (d) 2. to 5. ✓
14 and (2) (b) STET 1. to 3. applies.

15 (b)

16 **INSERT 11/19**

17 **SECTION 20.** 948.605 (2) (c) ✓ of the statutes is created to read:

18 948.605 (2) (c) Paragraph (a) ✓ applies to the possession of a firearm by one of
19 the following persons only if the property on which the person possesses the firearm is STET a state
20 or local government property, installation, building, base, or park:

21 1. A person who is employed in this state by a public agency as a law
22 enforcement officer, who is carrying a concealed firearm that has been shipped or
23 transported in interstate or foreign commerce, and to whom s. 941.23 (1) (d) 2. to 5. ✓
24 and (2) (b) STET 1. to 3. applies.

1 2. A qualified out-of-state law enforcement officer, as defined in s. 941.23 (1)
2 (d), who is carrying a concealed firearm that has been shipped or transported in
3 interstate or foreign commerce and to whom s. 941.23 (2) (b) 1. to 3. applies. ^{STET}

4 3. A retired Wisconsin law enforcement officer, as defined in s. 941.23 (1) (f),
5 or a retired federal or out-of-state law enforcement officer, as defined in s. 941.23
6 (1) (e), who is carrying a concealed firearm that has been shipped or transported in
7 interstate or foreign commerce and to whom s. 941.23 (2) (c) 3. a. to f. applies. ^{STET}

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1617/dn

MGD:.....

Wlj

Rep. Sherman:

1. In responding to the note on page 7 of the "/P1" version of this bill, you asked about the standard for intoxication. Current law does not specify a particular blood alcohol content level at which a person would be prohibited from going armed with a firearm. See s. 941.20 (1) (b). Nevertheless, the phrase "under the influence of an intoxicant" is defined in s. 939.22 (42) so that it would be applied in the same way as that standard is in drunk driving cases. Thus, drunk driving caselaw would help provide the meaning of the phrase in this context.

2. At the end of the "/P1" version of this bill, I asked what the penalty should be for a retired or out-of-state law enforcement officer who has been issued the requisite identification or certification documents but who is carrying a concealed weapon without it. Another possibility left open by federal law would be to treat the person as having violated Wisconsin's existing prohibition on carrying concealed weapons (and any other firearms statute that might apply). If you would prefer to follow that approach (instead of using the general penalty provision in s. 939.61 (1) for failing to carrying the identification or certification), please let me know.

3. As you requested, this draft includes a background check requirement, but it is limited to a search of DOJ records, which do not contain all the information that would be necessary to verify a person's eligibility to possess a firearm under federal law. For example, DOJ records would not show whether a person has been involuntarily committed to a mental health treatment facility. See 18 U.S.C. § 922(g)(4).

4. Mirroring federal law, the exemptions that the bill creates only apply to firearms that have been shipped or transported in interstate or foreign commerce. If you want to eliminate that distinction and have the exception apply to all firearms, regardless of their connection to interstate or foreign commerce, please let me know.

5. As noted in the analysis, the bill changes certain provisions in other firearms statutes to ensure that those statutes do not affect the right of a qualified law enforcement officer or a qualified retired law enforcement officer to carry a concealed firearm in the manner described in federal law. But the exceptions that some of those statutes will contain for Wisconsin law enforcement officers are narrow. To illustrate, s. 23.33 (3) (e) prohibits the operation of an ATV while possessing a loaded or unencased firearm. To make that provision consistent with federal law, the bill adds an exception

to allow active and retired law enforcement officers to carry a concealed firearm while operating an ATV. As amended, however, the statute would not explicitly authorize an on-duty or off-duty Wisconsin law enforcement officer to carry a firearm openly while operating an ATV. Presumably, an officer is unlikely to be prosecuted for ever doing so. But if you want to expand the exception for Wisconsin law enforcement officers so that it applies to them under all circumstances (or under certain specified circumstances), please let me know.

Michael Dsida
Legislative Attorney
Phone: (608) 266-9867

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-1617/2dn
MGD:wlj:jf

March 2, 2005

Rep. Sherman:

1. In responding to the note on page 7 of the "/P1" version of this bill, you asked about the standard for intoxication. Current law does not specify a particular blood alcohol content level at which a person would be prohibited from going armed with a firearm. *See* s. 941.20 (1) (b). Nevertheless, the phrase "under the influence of an intoxicant" is defined in s. 939.22 (42) so that it would be applied in the same way as that standard is in drunk driving cases. Thus, drunk driving caselaw would help provide the meaning of the phrase in this context.
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